

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

#### 7 CFR Parts 800 and 810

RIN 0580-AA90

#### United States Standards for Soybeans

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are revising the United States Standards for Soybeans to change the minimum test weight per bushel (TW) from a grade determining factor to an informational factor. As an informational factor, TW will be reported on official certificates unless requested otherwise. If the applicant requests that TW not be determined, soybean TW will not be determined and not reported on the official certificate. We also are changing the reporting requirements for TW in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. Additionally, we are clarifying the reporting requirements for TW in canola. These changes will further help to ensure market-relevant standards and grades and clarify reporting requirements.

**DATES:** *Effective Date:* September 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Becca Riese at GIPSA, USDA, 1400 Independence Avenue, SW., Washington, DC, 20250-3630; Telephone (202) 720-4116; Fax Number (202) 720-7883; e-mail [Rebecca.A.Riese@usda.gov](mailto:Rebecca.A.Riese@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The United States Grain Standards Act (USGSA) authorizes the Secretary of

Agriculture to establish official standards of kind and class, quality, and condition for soybeans and other grains (7 U.S.C. 76). The soybean standards appear in the regulations at 7 CFR 810.1604–810.1605. The U.S. Standards for Grain serve as the starting point to define U.S. grain quality in the marketplace.

This rule will make the following changes: (1) Revise designation of test weight in soybeans to be a non-grade determining informational factor, (2) amend the definition of “test weight per bushel” to indicate test weight for soybeans will be reported to the nearest tenth pound, and (3) clarify the certification requirements for test weight in soybeans and canola.

#### Designation of Minimum Test Weight Per Bushel

Since the establishment of the United States Standards for Soybeans in 1940, minimum TW has been included as a mandatory grade determining factor and has historically been perceived as a general indicator of overall soybean quality. Some perceive that a higher TW, or density, is indicative of a higher yield of oil and protein. Research indicates, however, that TW is not a good indicator of the oil and protein yield of processed soybeans.<sup>1</sup> A University of Illinois study concludes that the correlation coefficients between TW and protein and oil content are as low as 0.077 and 0.016 respectively.<sup>2</sup> Our analysis of our own inspection data supports the researchers’ findings.

As part of its evaluation of TW, we conducted a statistical review of inspection data to determine the impact of removing TW as a grade determining factor on the certified grades. As discussed later in this document, we updated our analysis. The additional information confirms our earlier conclusion that the market should not anticipate grade inflation or deflation due to our actions.

Based on our analysis of inspection data and other information, we are changing the minimum TW per bushel

from a grade determining factor to a non-grade determining informational factor in the official U.S. Standards for Soybeans. Even though we are changing TW to an informational factor, we will still require the measurement and reporting of TW for each official soybean grade inspection unless requested otherwise. Our evaluation indicates that not all buyers of soybeans are interested in the TW information; consequently, we will allow an optional exemption in the certification reporting requirements.

#### Reporting and Certification of Minimum Test Weight Per Bushel

We are revising 7 CFR 810.102(d) to report TW in soybeans to the nearest tenth of a pound. Presently, TW in soybeans is certified in whole and half pounds with fractions of a half pound disregarded. This change will bring the reporting requirements for TW into line with the reporting requirements for other factors in the Official Standards for Soybeans, such as foreign material and moisture content.

#### Inspection Plan Tolerances

To reflect the proposed change of TW from a grade determining factor to a non-grade determining informational factor, we are revising the tables pertaining to soybean grade limits in 7 CFR 800.86 of the regulations. Shiplots, unit trains, and lash barge lots are inspected in accordance to a statistically based inspection plan (7 CFR 800, originally published at 55 FR 24030; June 13, 1990). Inspection tolerances, commonly referred to as breakpoints, are used to determine acceptable quality. Changing TW from a grade determining factor to an informational factor necessitates removing soybean TW breakpoints from the Grade Limits and Breakpoints for Soybeans table and replacing them in the Breakpoints for Soybean Special Grades and Factors table.

#### Certification

We are clarifying the TW certification reporting requirements for both soybeans and canola in 7 CFR 800.162(c). For soybeans, we are clarifying the reporting requirements for test weight as a non-grade determining factor and the optional exemption for TW determination. The exemption will allow the applicant for inspection to request that TW not be determined, and

<sup>1</sup> Hill, L.D., “Changes in the Grain Standards Act,” Grain Grades and Standards, 113–184. West, V.J., “How Good Are Soybean Grades?,” Illinois Farm Economics, no. 192, Extension Service in Agriculture and Home Economics, College of Agriculture, University of Illinois, May 1951, p. 1166.

<sup>2</sup> Hill, L.D., “Improving Grades and Standards for Soybeans,” p. 829.

therefore not reported. With regard to canola, we are clarifying that TW in canola is only determined and reported upon request of an applicant.

#### **Comment Review**

In the March 29, 2006 **Federal Register** (71 FR 15639–15643), we invited comments on our proposed rule identifying changes to the United States Standards for Soybeans.

We received one comment during the 60-day comment period. The comment was submitted jointly by the Japan Oilseed Processors Association and the Japan Oil and Fat Importers and Exporters Association.

The commenters were of the view that a change in the status of TW would adversely impact the distribution of soybean grades (that is, grade inflation or deflation).

As discussed in the proposed rule, we analyzed inspection data to determine the impact of removing TW as a grade determining factor on the certified grades. The review established that in over 400,000 soybean inspections, certified between January 1, 2001, and September 30, 2003, 99.5 percent of the official grades would have been unaffected by the removal of TW as a grading factor. In preparation of this final rule, we updated our analysis to cover the five-year period from January 1, 2001, through December 31, 2005. The review indicated that approximately 2.2 percent of U.S. No. 2 Yellow soybeans, which is the common trading standard, would have graded as U.S. No. 1, if TW was not a grade determining factor. In other words, for the data analyzed, the certified grade may have improved 2.2 percent of the time, if TW had not been a grading factor. Further, we found that approximately 0.7 percent of U.S. No. 3 Yellow soybeans would have certified as U.S. No. 2, if TW was not a grade determining factor. In both instances, we consider the percentage change as insignificant. As a result, the market should not anticipate grade inflation or deflation due to this change.

The commenters also were of the view that a change in the status of TW would result in an increase in the percentage of smaller sized soybeans and more broken soybeans. We have no evidence that a change in the status of TW from a grade determining factor to an informational factor will result in a higher percentage of smaller-sized soybeans or result in more broken soybeans or splits. As a result, the market should not anticipate an increase in the amount of smaller sized soybeans or in splits in U.S. soybeans, on average, due to this change.

Nonetheless, buyers of U.S. soybeans may also ask for a sizing determination. As part of the sizing request, buyers can specify the sieve size. We report the percentage of the size fractions, as requested, to the nearest tenth in the Remarks section of the certificate. We use statements, such as “(a certain percent) passing through (a specified round-hole sieve)” and “(a certain percent) remaining on top of (a specified sieve).”

Further, the percentage of splits in a sample is already a grading factor. Additionally, small broken pieces of soybeans, which pass through an 8/64 round-hole sieve, are considered as foreign material, another grading factor. If there is a concern about splits or foreign material, a buyer may specify tighter limits than that allowed by grade. For example, a buyer may contract for U.S. No. 2 Yellow soybeans with splits not to exceed 10.0 percent. The specification is tighter than the grade limit of 20.0 percent for U.S. No. 2 Yellow soybeans.

Buyers may also request official analysis for oil and protein content. In recognition of protein and oil as the true determinants of value in soybean processing and the markets’ need to identify these intrinsic properties, GIPSA tests for both soybean protein and oil as official criteria under the USGSA.

Therefore, we are making no change in this final rule as a result of the comment.

#### **Effective Date**

As specified in the USGSA (7 U.S.C. 76(b)), amendments to the standards cannot become effective less than one calendar year after public notification, unless in the judgment of the Secretary, the public health, interest, or safety require that they become effective sooner. Making this rule effective on September 6, 2007 would be after the start of the marketing year, which begins September 1, 2007. There are inherent benefits in making this rule effective in time to have the same standards in place for the entire marketing year; we have determined that it is in the public interest to do so. There were no changes made in this final rule, so the standards are consistent with those proposed as published on March 29, 2006. For these reasons this final rule is effective September 1, 2007, for the beginning of the soybean harvest, and will facilitate domestic and export marketing of soybeans.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget (OMB).

We are amending the soybean standards to change TW from a grade determining factor to an informational factor. We are changing the reporting requirements for TW in soybeans from whole and half pounds with a fraction of a half pound disregarded to reporting to the nearest tenth of a pound. In addition, we are clarifying the reporting requirements for TW in canola. These changes are needed to ensure market-relevant standards and to clarify reporting requirements. Further, the regulations and standards are applied equally to all entities.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market.

Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. We provide mandatory inspection and weighing services at 33 export facilities. All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration.

The U.S. soybean industry, including producers (approximately 663,880), handlers (approximately 6,000 domestic elevators), traders (approximately 1,402 eligible soybean futures traders), processors (approximately 70 facilities), merchandisers, and exporters, are the primary users of the U.S. Standards for Soybean and utilize the official standards as a common trading language to market soybeans. Some of the entities may be small.

The USGSA (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling, weighing, or transporting grain totaling 15,000 metric tons or more during the

preceding or current calendar year. At present, there are 92 registrants who account for practically 95 percent of U.S. soybean exports, which for fiscal year (FY) 2005 totaled approximately 23,174,129 metric tons (MT). While most of the 92 registrants are large businesses, some may be small.

GIPSA has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

#### Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements are approved under OMB Number 0580-0013. An insignificant change in burden will result from the soybean informational factor change. However, any burden measurement, as a result of this change, will remain within the previously approved information collection requirements. Accordingly, no further OMB clearance is required under the Paperwork Reduction Act.

#### E-Government Act Compliance

We are committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

#### List of Subjects

##### 7 CFR Part 800

Administrative practice and procedure, Grains, Conflicts of interest, Exports, Freedom of information, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

##### 7 CFR Part 810

Exports, Grains.

■ For reasons set out in the preamble, 7 CFR parts 800 and 810 are amended as follows:

#### PART 800—GENERAL REGULATIONS

■ 1. Revise the authority citation for part 800 to read as follows:

**Authority:** 7 U.S.C. 71–87k.

■ 2. In § 800.86 (c)(2), revise tables 17 and 18 to read as follows:

#### § 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

TABLE 17.—GRADE LIMITS (GL) AND BREAKPOINTS (BP) FOR SOYBEANS

Grade	Maximum limits of—									
	Damaged kernels				Foreign material (percent)		Splits (percent)		Soybeans of other colors (percent)	
	Heat-damaged (percent)		Total (percent)							
	GL	BP	GL	BP	GL	BP	GL	BP	GL	BP
U.S. No. 1 .....	0.2	0.2	2.0	0.8	1.0	0.2	10.0	1.6	1.0	0.7
U.S. No. 2 .....	0.5	0.3	3.0	0.9	2.0	0.3	20.0	2.2	2.0	1.0
U.S. No. 3 .....	1.0	0.5	5.0	1.2	3.0	0.4	30.0	2.5	5.0	1.6
U.S. No. 4 .....	3.0	0.9	8.0	1.5	5.0	0.5	40.0	2.7	10.0	2.3

<sup>1</sup> Soybeans that are purple mottled or stained which will not be graded higher than U.S. No. 3.

<sup>2</sup> Soybeans that are materially weathered which will not be graded not higher than U.S. No. 4.

TABLE 18.—BREAKPOINTS FOR SOYBEAN SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Breakpoint
Garlicky .....	5 or more per 1,000 grams .....	2
Infested .....	Same as in § 810.107 .....	0
Soybeans of other colors .....	Not more than 10.0% .....	2.3
Moisture .....	As specified by contract or load order grade .....	0.3
Test Weight .....	As specified by contract or load order .....	−0.4

\* \* \* \* \*

■ 3. In § 800.162, revise paragraph (a) and add paragraph (c) to read as follows:

#### § 800.162 Certification of grade; special requirements.

(a) *General.* Except as provided in paragraph (c) of this section, each official certificate for grade shall show:

(1) The grade and factor information required by the Official U.S. Standards for Grain;

(2) The test weight of the grain, if applicable;

(3) The moisture content of the grain;

(4) The results for each official factor for which a determination was made;

(5) The results for each official factor that determined the grade when the grain is graded other than U.S. No. 1;

(6) Any other factor information considered necessary to describe the grain; and

(7) Any additional factor results requested by the applicant for official factors defined in the Official U.S. Standards for Grain.

\* \* \* \* \*

(c) Test weight for canola and soybeans. Official canola inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel only upon request by the

applicant. Official soybean inspection certificates will show, in addition to the requirements of paragraphs (a) and (b) of this section, the official test weight per bushel unless the applicant requests that test weight not be determined. Upon request, soybean test weight results will not be determined and/or reported on the official certificate.

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

■ 4. Revise the authority citation for part 810 to read as follows:  
Authority: 7 U.S.C. 71–87k.

■ 5. In § 810.102, revise paragraph (d) to read as follows:  
§ 810.102 Definition of other terms.  
(d) Test weight per bushel. The weight per Winchester bushel (2,150.42 cubic inches) as determined using an approved device according to procedures prescribed in FGIS instructions. Test weight per bushel in the standards for corn, mixed grain, oats, sorghum, and soybeans is determined on the original sample. Test weight per bushel in the standards for barley, flaxseed, rye, sunflower seed, triticale, and wheat is determined after

mechanically cleaning the original sample. Test weight per bushel is recorded to the nearest tenth pound for corn, rye, soybeans, triticale, and wheat. Test weight per bushel for all other grains, if applicable, is recorded in whole and half pounds with a fraction of a half pound disregarded. Test weight per bushel is not an official factor for canola.  
■ 6. Revise § 810.1604 to read as follows:  
§ 810.1604 Grades and grade requirements for soybeans.

Grading factors	Grades U.S. Nos.			
	1	2	3	4
Maximum percent limits of:				
Damaged kernels:				
Heat (part of total) .....	0.2	0.5	1.0	3.0
Total .....	2.0	3.0	5.0	8.0
Foreign material .....	1.0	2.0	3.0	5.0
Splits .....	10.0	20.0	30.0	40.0
Soybeans of other colors: <sup>1</sup> .....	1.0	2.0	5.0	10.0
Maximum count limits of:				
Other material:				
Animal filth .....	9	9	9	9
Caster beans .....	1	1	1	1
Crotalaria seeds .....	2	2	2	2
Glass .....	0	0	0	0
Stones <sup>2</sup> .....	3	3	3	3
Unknown foreign substance .....	3	3	3	3
Total <sup>3</sup> .....	10	10	10	10

U.S. Sample grade are Soybeans that:  
(a) Do not meet the requirements for U.S. Nos. 1, 2, 3, or 4; or  
(b) Have a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or  
(c) Are heating or of distinctly low quality.

<sup>1</sup> Disregard for Mixed soybeans.  
<sup>2</sup> In addition to the maximum count limit, stones must exceed 0.1 percent of the sample weight.  
<sup>3</sup> Includes any combination of animal filth, castor beans, crotalaria seeds, glass, stones, and unknown substances. The weight of stones is not applicable for total other material.

James E. Link,  
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DEPARTMENT OF TRANSPORTATION  
Federal Aviation Administration  
14 CFR Part 13  
[Docket No. FAA–2002–11483; Amendment  
No. 13–33]  
RIN 2120–AI52  
Revisions to the Civil Penalty Inflation  
Adjustment Rule and Tables;  
Correction  
AGENCY: Federal Aviation  
Administration (FAA), DOT.  
ACTION: Final rule; correction.  
SUMMARY: This document corrects an  
error that appeared in the previous  
correction to the final rule. The final

rule was published in the Federal Register on May 16, 2006, (71 FR 28518). The previous correction to the final rule was published in the Federal Register on August 16, 2006, (71 FR 47077). This document also amends the regulatory language in Table One as published in the Federal Register on August 16, 2006. The May 16, 2006, final rule implements adjustments to certain civil monetary penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.  
DATES: Effective September 6, 2006.  
FOR FURTHER INFORMATION CONTACT: Joyce Redos, Office of the Chief